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January 13, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

By Electronic Filing

Re: Joint Petition of Accipiter
Communications, Inc. and Qwest Corporation for
Waiver of the Definition of "Study Area" of the
Appendix-Glossary of Part 36 of the
Commission's Rules, Petition for Waiver of Sec.
69.3(e)(11) of the Commission's Rules. CC
Doc. No. 96-45

Ex Parte Notice

Dear Ms. Dortch:

On January 12, 2011 Lewis van Amerongen, Phillip Sotel, Patrick Sherrill and I, representing Accipiter Communications, Inc. met with Diane Griffin Holland and Sonja Rifken of the Office of General Counsel and Amy Bender and Gary Seigel of the Wireline Competition Bureau to discuss Accipiter's Application for Review of the decision of the Wireline Competition Bureau denying the joint Petition of Accipiter and Qwest for waiver of the frozen study area rule.

The Accipiter representatives explained that the record before the Bureau includes a clear showing of several public interest factors supporting a grant of the petition and stated they do not understand why the Bureau concluded that the public interest had not been demonstrated. During the over four years the petition was before the Bureau, the only public interest concern expressed by it or other parties was the provision of High Cost Support to an area served by a CLEC. Because Accipiter agreed to forgo support that concern became irrelevant.

The Accipiter representatives noted that the Arizona Corporation Commission had concluded that the rearrangement of the Qwest/Accipiter service areas boundaries was in the public interest, and that the ACC is composed of five members elected on a statewide basis. With

no articulated federal interest in preventing the ACC from regulating these boundaries, and contrary to twenty five years of precedent, Accipiter remains at a loss to understand why the Petition was denied. In addition to the two letters in the prior record, the Accipiter representatives noted that the Chairman of the ACC wrote to Chairman Genachowski on December 10, 2010 reiterating that the ACC found the transfer of the area to Accipiter by Qwest was in the public interest.

The Accipiter representatives pointed out the irony that the Bureau's order, if not reversed, could force Accipiter to withdraw from the area depriving consumers there of wireline-based competition for voice and broadband. In turn, the effect would be to reinstate a CLEC's illegal monopoly scheme that was originally undone only after intervention from the U.S. Department of Justice and the Arizona Corporation Commission. The denial order serves only the interest of the CLEC in contradiction to the public interest pursuits of the DoJ and ACC.

Please contact me if there are any questions on this matter.

Sincerely yours,

David Cosson
Counsel to Accipiter Communications, Inc

cc: Diane Griffin Holland
Sonja Rifken
Amy Bender
Gary Seigel
Melissa Newman, Qwest

